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Of Attorneys for City Defendants

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

JOHN LEE MALAER,

Plaintiff,

vs.

GEOFFREY KIRKPATRICK, an individual;  
MICHAEL WULFF, an individual; OMAR  
ESQUEDA, an individual; ASHLEY MCFALL,  
an individual; CITY OF MEDFORD, a  
government agency; JACKSON COUNTY, a  
government agency; NATHAN SICKLER, in  
his individual and official capacity; and BRIAN  
KOLKEMO, an individual,

Defendants.

Case No. 1:20-cv-00049-CL

**RESPONSE TO COURT CONCERNS**

At the hearing of April 4, 2023, this Court raised concerns about the level and nature of rhetoric in the City's motion to require destruction of the Kirkpatrick IA report. After the hearing, I re-read that motion in light of the Court's concerns. While I do not feel that the City's motion contains material factual inaccuracies, and while the City does not withdraw its request that the

document be destroyed and not used further in this litigation, I want to say this: while I was frustrated that we were coming back to the Court for the third time on the issue of whether the IA report is off-limits, I should not have let my frustration get the better of me. In this motion, I used a level of heated rhetoric that I do not feel reflects my commitment to professionalism.

I apologize to this Court, and I apologize to opposing counsel.

The City will separately provide the sur-reply on the motion to amend complaint that this Court authorized by this Friday, April 7, 2023, but I wanted to directly address this issue sooner rather than later.

DATED this 5<sup>th</sup> day of April, 2023.

MEDFORD CITY ATTORNEY'S OFFICE

/s/ Eric B. Mitton  
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McFall.

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